tax the defendant under the Inheritance Tax Law. ILL. REV. STAT., c. 120, § 366. *Held*, that the defendant is not taxable. *People* v. *Schaefer*, 107 N. E. 617 (Ill.).

When a testator leaves property to a legatee with the informal understanding that he is to hold in trust for certain beneficiaries, it would be a fraud for the legatee to keep for himself, and the courts accordingly raise a constructive trust in favor of the beneficiaries to prevent unjust enrichment. *In re Fleetwood*, 15 Ch. D. 594; *Trustees of Amherst College* v. *Ritch*, 151 N. Y. 282, 45 N. E. 876; *Lawrence* v. *Oglesby*, 178 Ill. 122, 52 N. E. 945. As it is impossible to restore the *statum quo*, and enable the testator to do over again properly what he tried to do improperly, the chief argument for imposing a resulting trust when an express trust fails with the settlor living, has no application. See 20 HARV. L. REV. 549, 554. Where the legatee, however, is ignorant of the names of the *cestuis* until the testator's death, the English courts, at least, have refused to enforce the trust, saying that it would violate the Wills Act to ascertain the names by an unattested document. *In re Boyes*, 26 Ch. D. 531. *Cf. McCormick* v. *Grogan*, L. R. 4 H. L. 82; *Walgrave* v. *Tebbs*, 2 K. & J. 313. But see *Gore* v. *Clarke*, 37 S. C. 537, 16 S. E. 614. But even the English courts have not hesitated to examine an unattested document when the question was what part of the property was held in trust. *In re Maddock*, [1902] 2 Ch. 220. And irrespective of the enforceability of the trust, it would seem that the legatee should at least be permitted to carry out the testator's wishes. *In re Dean*, 41 Ch. D. 552; see 28 HARV. L. REV. 237, 263. The question remains whether the legatee should be subject to the Illinois inheritance tax, which exempts beneficial interests passing by will or intestacy to charities. ILL. REV. STAT., c. 120, § 366. The New York court has held in a similar case that it is the constructive trustee to whom the beneficial interest passes by will. *In re Edson*, 38 App. Div. 19, 56 N. Y. Supp. 409; aff'd 159 N. Y. 568, 54 N. E. 1092. See N. Y. CONSOL. LAWS, TAX LAW, §§ 220, 221. But the charitable *cestuis* do take beneficially by virtue of an imperfect right arising before the testator's death, although not strictly under the will, and it seems a preferable construction, therefore, to hold that the property passes to them free of tax.

VENDOR AND PURCHASER — REMEDIES OF PURCHASER — MERGER OF EXECUTORY CONTRACT OF SALE BY ACCEPTANCE OF DEED. — A vendor covenanted to convey land by a deed of special warranty, clear of all incumbrances. The purchaser paid over the purchase money and accepted a deed which contained only special warranty and no general covenant against incumbrances. The land having been sold on execution to satisfy an unknown preëxisting incumbrance, the purchaser brings this action to recover back the purchase money. *Held*, that the purchaser can recover. *White* v. *Murray*, 218 Fed. 933 (Dist. Ct., W. D. Pa.).

There is no implied warranty of title in sales of real property. It follows that a vendor selling land is not responsible for the goodness of his title beyond the extent of the covenants in his deed. *Clare* v. *Lamb*, L. R. 10 C. P. 334; *Union Pacific Ry. Co.* v. *Barnes*, 64 Fed. 80; see MAUPIN, MARKETABLE TITLE, 2 ed., § 267. And by the weight of authority, in the absence of fraud or mistake, even express promises to give good title, whether written or oral, are held to be merged in the final acceptance of a deed, on the principle that the deed is the instrument in which the last agreement of the parties as to the risk of defective title is to be found. *Whittemore* v. *Farrington*, 76 N. Y. 452; *Bryan* v. *Swain*, 56 Cal. 616; *Porter* v. *Cook*, 114 Wis. 60, 89 N. W. 823; *Fuson* v. *Chestnut*, 33 Ky. L. Rep. 249, 109 S. W. 1192; see MAUPIN, MARKETABLE TITLE, 2 ed. §§ 181, 269. Some cases, however, are very liberal in admitting extrinsic evidence to determine whether the deed was accepted in discharge

of previous agreements as to title. *Davis* v. *Lee*, 52 Wash. 330, 100 Pac. 752; *Read* v. *Loftus*, 82 Kan. 485, 108 Pac. 850; and *cf. Slocum* v. *Bracy*, 55 Minn. 249, 56 N. W. 826. And the Pennsylvania cases, which this decision follows, go still further and hold that promises of good title are collateral in their nature and survive the acceptance of the deed, in so far as they have not been embodied in it. *Close* v. *Zell*, 141 Pa. 390, 21 Atl. 770; *Lehman* v. *Paxton*, 7 Pa. Super. Ct. 259. This seems an unsupportable departure from a rule long recognized as tending to prevent fraud and uncertainty and seems particularly objectionable when, as in the principal case, the presence of one covenant as to title appears by implication to exclude all others.

WAR — PRIZE — SHIPOWNER'S RIGHT TO FREIGHT IN TRADE WITH THE ENEMY. — The cargo of a British vessel while *en route* for Germany was seized at the outbreak of the war, and later condemned as prize. *Held*, that the owners are entitled to freight *pro rata itineris* completed at the time of seizure. *The Juno*, 50 L. J. 29 (Adm. Ct.).

Since freight is not due until delivery, a shipowner cannot ordinarily recover his freight if he has failed to deliver the cargo at the port of destination. *Osgood* v. *Groning*, 2 Camp. 466; *The Mary Riley* v. *Three Thousand Railroad Ties*, 38 Fed. 254. And if the owner of the cargo voluntarily accepts the goods at some other port he will become liable only for the freight *pro rata itineris*. *Luke* v. *Lyde*, 2 Burr. 882. See *Osgood* v. *Groning*, *supra*, 470. However, when a neutral vessel carrying enemy goods is detained and the goods are condemned, the shipowner can recover the full freight to the original port of destination. *The Hoop*, 1 C. Rob. 196. See Note, 3 C. Rob. 304; *CONSOLAT DEL MAR*, 3 TWISS, BLACK BOOK OF THE ADMIRALTY, p. 539. This rule seems to be based on the idea that the captor takes the place of the enemy consignee in all respects, and that the capture therefore amounts to delivery. See *The Copenhagen*, 1 C. Rob. 289, 291. It would also be unjust to deprive the neutral vessel of the freight which she was entitled to earn, since neutral vessels may rightfully engage in commerce with belligerents. But the subjects of belligerent nations lose the right to engage in trade with the enemy immediately on the declaration of war. See 2 WESTLAKE, INTERNATIONAL LAW, 2 ed., pp. 48 *ff.* When war was declared, therefore, the shipowner in the principal case lost the right to earn freight by the transportation of enemy goods. But until then he seems to be in much the same position as a neutral shipowner, and the rule awarding him freight *pro rata itineris* seems reasonable and just.

BOOK REVIEWS

THE RIGHTS AND REMEDIES OF CREDITORS RESPECTING THEIR DEBTOR'S PROPERTY. By Garrard Glenn. Boston: Little, Brown, and Company. 1915. pp. xlvi, 461.

This volume contains the substance of a course of lectures delivered at the Columbia Law School. The aim of the lectures and of the book is to collect and harmonize various statutes and doctrines relating to the general subject of the realization of claims by a creditor from the property of his debtor.

This object is a commendable one, and the author has little rivalry in the attempt that he has made. Books on fraudulent conveyances, for instance, say little or nothing about bankruptcy. Even the largest books on bankruptcy have very fragmentary and inadequate treatment of the general subject of